

MINUTES
Texas Real Estate Commission
November 6, 2000
Conference Room 235, Texas Real Estate Commission
Austin, Texas

Chairman Michael Brodie called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, November 6, 2000. In addition to Chairman Brodie, members present were Ramon "Mick" Cantu, Lawrence Jokl, James Austin, Maria Gil, and Kay Sutton. Mr. Jokl, seconded by Ms. Sutton, moved to excuse the absences of Mr. Brummett, Ms. Folmer and Ms. Mayfield.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Mark Moseley, General Counsel; Alan Waters, Director of Staff Services; Loretta DeHay, Director of Enforcement; Glen Bridge, Director of Information Services; Gwen Jackson, manager of the Education Section; Michelle Bowens, manager of the Licensing Section; Lorie Deanda, manager of the Communications Section; and Patricia Holder, Executive Assistant.

After calling the meeting to order, Chairman Brodie led the attendees in the pledge of allegiance and the Texas pledge of allegiance.

Chairman Brodie moved to agenda item two, minutes of September 25, 2000, Commission meeting. Ms. Sutton, seconded by Ms. Gil, moved to approve the minutes as submitted. The motion was adopted by unanimous vote.

Mr. Brodie moved to agenda item three, monthly staff reports; committee reports.

Ms. Hassumani reported that TREC participated in the 21st annual Austin Board of Realtors Realty Roundup. More than twelve hundred packets of TREC information were distributed during the event, several staff members were available to answer questions, and an on-line license renewal demonstration was presented. Ms. Hassumani reported that five different staff training sessions were planned in the near future.

Ms. DeHay introduced Doug Wise, a new staff attorney. Ms. DeHay referred to the end of year figures in the August staff reports, a total of 3,189 cases were closed and 3,200 were opened during the fiscal year. Ms. DeHay also reported on the disciplinary actions for FY 2000.

Mr. Bridge reported concerning on-line renewals. In FY 2000, over two million pages were viewed on the web site. Considering this amount of activity, on-line renewals should increase. There was discussion concerning the convenience fee charged for credit card transactions and taking credit cards for all renewals.

Mr. Waters introduced Karen Alexander, the new chief accountant. He reported on the Recovery Fund reinvestments and the pending claims at the end of the fiscal year. Mr. Waters reported that the Comptroller's Office had completed its audit of the payroll and travel vouchers.

Mr. Thorburn reported on a new brochure that had been developed by TREC. He also reported that three of the Inspector Committee members' terms would be expiring February 2001 and an unexpired term was vacant due to the resignation of Phillip Watkins.

The Chairman moved to agenda item four, general comments from visitors. Larry Foster,

Chairman of the Real Estate Inspector Committee, reported on the Committee meeting held the previous week. Among the items discussed were the inspector exam, plans to revise certain areas of the exam and adjust the time allowed for passing the test.

Ray Adams, Texas Warranty Association, reported concerning the new association consisting of residential service companies in Texas. He also reported on concerns in the industry regarding regulation of residential service companies in Texas.

Malcolm Richards, Real Estate Center at Texas A&M, reported on the calendar/annual report that had been distributed to the members. Mr. Thorburn thanked Mr. Richards for the Center's participation in producing a video.

Chairman Brodie moved to agenda item five, discussion and possible action to adopt proposed amendments or repeal of: (a) 22 TAC §§535.205-535.226, concerning licensed inspectors; (b) 22 TAC §535.400, §535.403, concerning registered easement or right-of-way agents.

Mr. Moseley presented agenda item five(a) for discussion and possible action to adopt proposed amendments or repeal of: (a) 22 TAC §§535.205-535.226, concerning licensed inspectors. One comment letter had been received. Mr. Foster, Texas Real Estate Inspector Committee, spoke in favor of the adoption of all the rule changes with one exception, §535.217. The Committee requested that language in the proposed rule, section (1) be changed. The change is as follows:

" (1) accepting a fee or other valuable consideration in a transaction from a person, other than the inspector's client, without first disclosing to all parties in the transaction that the inspector intends to receive the fee or other valuable consideration, and obtaining the consent of the **inspector's client (all parties)**."

Ms. Sutton, seconded by Ms. Gil, moved to amend the language in §535.217, as requested. The motion was adopted by unanimous vote.

Ms. Gil, seconded by Ms. Sutton, moved to adopt the proposed amendments to 22 TAC §§535.205-535.226, concerning licensed inspectors as amended with an effective date of January 1, 2001. The motion was adopted by unanimous vote.

Mr. Moseley presented item five(b) for discussion and possible action to adopt amendments or the repeal of 22 TAC §535.400, §535.403, concerning registered easement or right-of-way agents. Mr. Austin, seconded by Mr. Jokl, moved to adopt the proposed amendments as submitted with an effective date of January 1, 2001. The motion was adopted by unanimous vote.

Mr. Moseley presented agenda item six for discussion only of proposed amendments to: (a) 22 TAC §§537.11, 537.33, 537.42 and 537.46, concerning standard contract forms; (b) 22 TAC §535.62, concerning acceptable courses of study; (c) 22 TAC §535.71 and §535.72, concerning mandatory continuing education. Chairman Brodie asked for comments on the agenda item. Ron Walker, Texas Association of Realtors, commented on agenda item six(c), in opposition of that portion of the rule which required a three day waiting period between the enrollment in an alternative delivery course or correspondence course and taking the final examination.

Mr. Brodie moved to agenda item seven, discussion and possible action to adopt the reviews of: (a) 22 TAC §§535.71-535.73, 535.81; (b) 22 TAC §§535.205-535.226; (c) 22 TAC §§535.300, 535.400-

535.403. Mr. Moseley presented the agenda item for discussion and possible action. Mr. Austin, seconded by Ms. Sutton, moved to readopt the review of 22 TAC §§535.71-535.73, 535.81 as amended. The motion was adopted by unanimous vote. Ms. Gil, seconded by Mr. Austin, moved to readopt 22 TAC §§535.205-535.226 as amended. The motion was adopted by unanimous vote. Mr. Austin, seconded by Ms. Sutton, moved to readopt 22 TAC §§535.300, 535.400-535.403 as amended. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eight, discussion and possible action to approve recovery fund investment policies. Mr. Waters recommended readopting the December 1999 policy without changes. Mr. Austin, seconded by Ms. Gil, moved to readopt the policy as recommended. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item nine, consideration of complaint information. Ms. DeHay requested authorization to initiate investigations on the following persons for failure to provide information in connection with their license renewals: Glenda Bennett and Daniel Greenfield Lattimer. Ms. Sutton, seconded by Ms. Gil, moved to authorize initiating the investigations. The motion was adopted by unanimous vote.

Ms. DeHay requested authorization to initiate investigations on the following persons for failing to complete their Mandatory Continuing Education hours or pay the \$200 fee needed to renew a license within the time required by rule: Michael Trace Bond; Louis Michael Espinar; John Ross Martin III and Stephen Alexander McKendrick. Ms. Gil, seconded by Mr. Austin, moved to authorize initiating the investigations. The motion was adopted by unanimous vote.

Ms. DeHay requested authorization to initiate investigations on the following person in conjunction with information received from a late renewal of a real estate salesperson license in violation of §15(a)(6)(F) and §15(a)(6)(S): James Ray McClung and JAVCOM, Inc., Jimmie Ann Vaughan, Designated Officer. Ms. Gil, seconded by Mr. Jokl, moved to authorize initiating the investigations. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item ten, motion to Revoke Probation in the Matter of Michael G. Painter; Motion for Rehearing and/or Probation in the Matter of Joe H. Ramon; Motion for Rehearing and/or Probation in the Matter of Carlton Skinner Simpson.

Sharon Rector, staff attorney, presented a motion for continuance in the Matter of Joe H. Ramon. The motion was granted by unanimous vote. The motion would be considered at the January 8, 2001 meeting.

The Chairman called for the motion to Revoke Probation in the Matter of Michael G. Painter. Neither Mr. Painter nor any representative for him was present. Ms. Rector appeared for the Enforcement division of the Texas Real Estate Commission. Ms. Rector presented the Enforcement division's motion to revoke probation. The motion to revoke probation was granted by unanimous vote.

The Chairman called for the motion for rehearing and/or probation in the Matter of Carlton Skinner Simpson. Chairman Brodie relinquished the gavel to Mr. Cantu for the rehearing. Mr. Skinner was represented by Randall Jackson, attorney, and the Enforcement Division was represented by Beverly Rabenberg, staff attorney. Mr. Jackson presented the motion for rehearing and/or probation.

Ms. Rabenberg presented the Enforcement division's response. After discussion, the motion for probation was amended to include both the standard and the following terms:

- (1) \$5000 would be paid to the Commission on or before December 31, 2000;
- (2) \$500 would be paid monthly for a total of 35 months beginning January 31, 2001; and
- (3) a final payment of the remaining balance would be due on January 31, 2004.

Beginning at 5:00 p.m., November 13, 2000, the revocation will be fully probated through February 29, 2004 subject to the terms and conditions stated in the order.

Mr. Brodie called for a vote on the motion. Mr. Jokl voted against the motion. Mr. Austin, Chairman Brodie, Mr. Cantu, Ms. Sutton and Ms. Gil voted to approve the motion. The motion was approved.

Chairman Brodie moved to agenda item eleven, entry of orders in contested cases. There were no orders to be entered.

The Chairman moved to agenda item twelve, executive session to discuss pending litigation pursuant to Texas Government Code, § 551.071, and, if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §551.071(2). The executive session began at 10:20 a.m.

The meeting was called back to order at 10:38 a.m. by Chairman Brodie. Mr. Brodie moved to agenda item thirteen, discussion and possible action to authorize payments from recovery funds.

RF 01-001 Stella Brown vs. Alberta Ruth Edwards, in the amount of \$770 actual damages and \$1,000 in attorneys fees. Mr. Austin, seconded by Ms. Sutton, moved approval. The motion was adopted by unanimous vote.

RF 01-002 Mike and Margaret Ring vs. Anna Wandio, in the amount of \$3,200 actual damages and \$1,289 in attorneys fees. Ms. Gil, seconded by Mr. Austin, moved approval. The motion was adopted by unanimous vote.

RF 01-003 Century 21 APD vs. James A. Bindon, in the amount of \$4,800 actual damages and \$600 in attorneys fees. Mr. Austin, seconded by Ms. Sutton, moved approval. The motion was adopted by unanimous vote.

The next regularly scheduled meeting of the Commission is January 8, 2001. Mr. Jokl, seconded by Mr. Austin, moved to adjourn the meeting. The meeting was adjourned at 10:50 a.m.

APPROVED this the 8th day of January, A.D., 2001.

Chairman

ATTEST: _____